



**CITY OF SOMERVILLE, MASSACHUSETTS**  
**MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT**  
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**Case #: ZBA 2017-81**  
**Site: 343, 345, 349 & 351 Summer Street**  
**Date of Decision: August 16, 2017**  
**Decision: Petition Denied**  
**Date Filed with City Clerk: August 30, 2017**

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**ZBA DECISION**

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**Applicant Name:** Mary Gray  
**Applicant Address:** 48 Hawthorne Street, Somerville, MA 02144  
**Property Owner Name:** 351 Summer LLC  
**Property Owner Address:** 13 Wheeling Avenue, Woburn, MA 01801  
**Agent Name:** Philip H. Cahalin  
**Agent Address:** 85 Exchange Street, Suite 206, Lynn, MA 01901

Legal Notice: Applicant Mary Gray seeks an Administrative Appeal per SZO §3.1.9, 3.2, and 3.2.3 and MGL c. 40A §8 from a decision by the Inspectional Services Department to issue a building permit (B16-001971) for construction of a structure at 343-351 Summer Street per ZBA Decision 2011-54. The property owner is 351 Summer LLC.

<u>Zoning District/Ward:</u>	CBD & RA zones/Ward 6
<u>Zoning Approval Sought:</u>	§3.1.9
<u>Date of Application:</u>	July 12, 2017
<u>Date(s) of Public Hearing:</u>	August 16, 2017
<u>Date of Decision:</u>	August 16, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2017-81 was opened before the Zoning Board of Appeals at Somerville City Hall on August 16, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



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**DESCRIPTION:**

Mary Gray has filed an appeal of the issuance of the building permit for the building at 343-351 Summer Street (BP16-001971) and has listed that the appeal is filed for “the following reasons among others.”<sup>1</sup>

**1 – Ms. Gray alleges that:** the project is in “violation of SZO 8.6.12, (as) the buildings are in the CBD district and are within 15’ of the RA district line.

**2 – Ms. Gray alleges that:** the project is in violation of “SZO 9.9.c which allows only one driveway curbscut per street line for lots in RA districts.”

**3 – Ms. Gray alleges that:** the project fails “to comply with Condition 70 of ZBA Decision No. 2011-54 which requires “The applicant shall establish a deed restriction indicating that the parcels cannot be sold independently and control of the land shall remain with a single legal entity.”

**4 – Ms. Gray alleges that:** there is “failure to provide adequate information to ascertain whether the proposed open air parking spaces comply with requirements of SZO 9.11 and the information provided for the parking spaces in the garage and under the residential building in the rear shows that they do not comply with SZO 9.11

**BACKGROUND:**

The 2011 special permit was approved by the ZBA after many months and many meetings of testimony. The project included over 70 conditions. In the past decade there is likely no case that has been more analyzed and more carefully conditioned than the project at this site. That 2011 decision was appealed by other residents of Hawthorne Street, and that appeal was decided in favor of the ZBA by the Superior Court in a decision in December of 2015.

After the court upheld the ZBA decision, there was a change in project developer, and the new developer filed for a building permit in late 2016. Over the next few months, the applicant completed all of the application and answered all of the required conditions for a building permit. The permit review process took approximately seven months, and the permit was issued in June.

**APPEAL:**

In her appeal, Ms. Gray has put forth four main arguments. A discussion of each of these arguments and the Board’s determination on each item is below:

***Ms. Gray alleges that: the project is in “violation of SZO 8.6.12, (as) the buildings are in the CBD district and are within 15’ of the RA district line.***

The ordinance states that buildings in the CBD district that abut a lot within the RA district cannot be within 15’ of the line. The staff and the 2011 ZBA interpreted this to mean that they cannot be within 15 feet of the side property line, NOT (as Ms. Gray alleges) within 15 feet of a district line that divides the split-lot parcel. Based upon this, there is no violation here. This item was reviewed by the Planning Division prior to the 2011 hearing, by the ZBA during the 2011 hearing, and by ISD during final zoning review. When the project decision was upheld by the superior court, the court also did not take issue with

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<sup>1</sup> The term “among others” in this appeal suggests that the applicant intended to add other issues to the appeal. The appeal was filed on the last day that a building permit appeal may be filed by law. The applicant must address the grounds for the appeal to permit ISD, the Planning Division staff, and the building permit applicant the opportunity to respond to the appeal. Ms. Gray provided no additional grounds for this appeal at the hearing.

this interpretation. Therefore, while the buildings may be within 15 feet of the line that separates RA and CBD districts and bisects the combined lot, this is not the line from which split lots would be measured. Otherwise, split lots that cross zoning boundaries would have insurmountable no-build areas.

***Ms. Gray alleges that: the project is in violation of "SZO 9.9.c which allows only one driveway curbcut per street line for lots in RA districts."***

The law limits curbcuts as follows:

SZO 9.13. SZO 9.9.c states that, "In all districts except Residence "A", Residence "B", and the University District, the number of driveways permitting entrance to and exit from a lot shall be limited to two per street line. For lots in Residence "A" and "B" districts, only one (1) driveway curb cut shall be permitted per street line."

The site had three curbcuts prior to construction. The proposed project, upon completion, will have two.

The curbcut which services the underground parking is located in a CBD district as indicated on the plans. The cut which services the surface lot is within the RA zone and is the only cut within the RA zoned portion of the project. ZBA 2011-54 indicates in findings section 2.1 "two curb cuts are proposed which is compliant with City Regulations and is one fewer than the existing site."

Although a portion of this lot is in the RA district, that portion is compliant. And, as a whole, the joined lot is more conforming after the project than it was before the start of the project. Therefore, there is no zoning violation here.

***Ms. Gray alleges that: the project fails "to comply with Condition 70 of ZBA Decision No. 2011-54 which requires "The applicant shall establish a deed restriction indicating that the parcels cannot be sold independently and control of the land shall remain with a single legal entity."***

The lots were merged prior to the issuance of a building permit. The applicant filed, with the Planning Division, a plan of land showing the lots merged. The applicant filed this plan with the registry of deeds. The applicant then provided and filed a statement that restricts the independent sale of any portion of the project. This meets the condition. While the building permit was issued prior to receipt of the final document, this was corrected within a few days of issuing the permit and the project is now in compliance.

***Ms. Gray alleges that: there is "failure to provide adequate information to ascertain whether the proposed open air parking spaces comply with requirements of SZO 9.11 and the information provided for the parking spaces in the garage and under the residential building in the rear shows that they do not comply with SZO 9.11"***

The building permit plan set matches the ZBA approved plan set. The ZBA special permit includes relief from the dimensions of SZO 9.11 under SZO 9.13. That relief was granted by the Board in 2011. No material changes have been made to the plans for parking space sizes and/or locations since that 2011 approval, and therefore the dimensions on the plan are permitted as a part of the approved Special Permit.

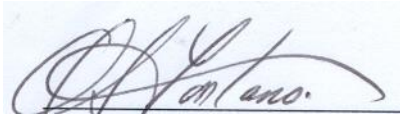
## **DECISION:**

Present and sitting were Members Orsola Susan Fontano, Danielle Evans, Elaine Severino, Anne Brockelman and Pooja Phaltankar with Richard Rossetti and Josh Safdie absent. Upon making the above findings, Danielle Evans made a motion to deny the request for an Administrative Appeal. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **DENY** the request and **UPHOLD** the building permit.



Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*  
Danielle Evans  
Elaine Severino  
Anne Brockelman (Alt.)  
Pooja Phaltankar (Alt.)



Orsola Susan Fontano, *Chairman*



Danielle Evans



Elaine Severino



Anne Brockelman (Alt.)



Pooja Phaltankar (Alt.)

Copies of this decision are filed in the Somerville City Clerk's office.  
Copies of all plans referred to in this decision and a detailed record of the  
SPGA proceedings are filed in the Somerville Planning Dept.

### **CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner



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of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on \_\_\_\_\_ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

\_\_\_\_\_ there have been no appeals filed in the Office of the City Clerk, or  
\_\_\_\_\_ there has been an appeal filed.

Signed \_\_\_\_\_ City Clerk Date \_\_\_\_\_

